

Explanatory Memorandum to The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2024

This Explanatory Memorandum has been prepared by the Climate Change and Fuel Poverty Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change

11 March 2024

PART 1

1. Description

- 1.1 The Home Energy Efficiency Schemes (Wales) (Amendment) Regulations 2024 (“these Regulations”) amend The Home Energy Efficiency Schemes (Wales) Regulations 2011 (“the 2011 Regulations”).
- 1.2 These Regulations amend the eligibility criteria in the 2011 Regulations for grant support available to low-income households living in the least energy efficient homes in Wales (EPC rating of E or less) by:
 - 1.2.1 extending eligibility to lower income households who are not in receipt of means-tested benefits,
 - 1.2.2 including job-seeker’s allowance to the list of eligible means-tested benefits,
 - 1.2.3 extending eligibility to dwellings with an EPC rating of D or less where the applicant is either on means-tested benefits or from a lower income household and the applicant has a chronic respiratory, circulatory or mental health condition, and
 - 1.2.4 removing the restriction on repeat applications, opening up the possibility of further grants to eligible dwellings that have previously benefitted from grants under the 2011 Regulations.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 Section 15(1) of the Social Security Act 1990 provides that the Secretary of State may make, or arrange for the making of, grants towards the cost of work or advice to improve thermal insulation or otherwise to reduce or prevent energy wastage in dwellings in accordance with regulations made by the Secretary of State.
- 3.2 The National Assembly for Wales (Transfer of Functions) Order 1999 provided that the relevant functions of the Secretary of State in section 15 of the Social Security Act 1990 were to be exercisable in relation to Wales concurrently with the National Assembly for Wales free from the requirement for Treasury consent. The powers of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. Paragraph 1 of Schedule 3A to the Government of Wales Act 2006 provides that functions of the Secretary of State under section 15 of the Social Security

Act 1990 are exercisable concurrently by the Welsh Ministers free from any requirement for Treasury consent.

3.3 These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 Tackling poverty, including fuel poverty, is a key priority for the Welsh Government. Using the Welsh Housing Conditions Survey 2017-18 as a base, an estimated 196,000 households in Wales were living in fuel poverty as at October 2021. 38,000 households were living in severe fuel poverty. A further 153,000 households were at risk of fuel poverty.

4.2 Following the surge in the price of energy, the Welsh Government modelled estimates of fuel poverty indicated that up to 45% (614,000) of all households could be in fuel poverty following the price cap increase of April 2022 using the Welsh fuel poverty measure. A further 15% (201,000) of all households could be at risk of falling into fuel poverty.

4.3 While energy costs have reduced considerably since their peak, they remain nearly double the level before the global energy price surge.

4.4 While the root causes of fuel poverty are complex, a contributing factor is the proportion of homes in Wales which are not energy efficient. By improving the energy efficiency of homes occupied by low-income households, the occupants can save on energy costs or keep their homes at a comfortable temperature for the same cost.

4.5 The purpose of these Regulations is to amend the 2011 Regulations to extend the eligibility criteria for energy efficiency grants provided by the Welsh Government for low-income households in energy inefficient dwellings, and to correct a minor drafting error.

4.6 The 2011 Regulations provide that applications for grants for works are only available to applicants in receipt of means tested benefits in dwellings with an asset rating of 54 or less (EPC rating of E or less). However, there are examples of households in Wales on lower incomes but not in receipt of means-tested benefits who are living in fuel poverty. By expanding the eligibility criteria to include applicants from a lower income household, these Regulations ensure grants are available to those who need it most.

4.7 The threshold for what constitutes a lower income household is a net household income less than 60% of the median equivalised net household income. This threshold is used extensively across the UK and derives from the Households Below Average Income statistics, which are produced annually by the Department for Work and Pensions based on a survey of 20,000 households across the UK. The data undergoes equivalisation to allow comparison to be made of individuals of different

ages and from different sized households. Further detail on the methodology can be found here: [How low income is measured in households below average income statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/how-low-income-is-measured-in-households-below-average-income-statistics)

- 4.8 The Welsh Government will use the methodology to confirm thresholds for different household types and publish this information on our scheme web page. There will also be a freephone number for people to call, with trained energy advisors who can take people through the process of determining the threshold for their specific household.
- 4.9 These Regulations also add income-based jobseeker's allowance to the list of eligible means-tested benefits. The UK Government intends to migrate everyone receiving income-based job seeker's allowance onto Universal Credit. However, as this process hasn't concluded, job seekers allowance has been added to the list of eligible benefits to ensure parity of treatment for those who have been migrated and those who have not.
- 4.10 In the period September 2017 to April 2021, the Welsh Government delivered a pilot scheme to extend home energy grants to those on low incomes with specific health conditions living in homes with EPC D or below. Welsh Ministers used the provision under Regulation 5(4) of the 2011 Regulations for the pilot. The National Institute for Health and Care Excellence (NICE) recognise people with chronic respiratory, circulatory and mental health conditions as being most vulnerable to the negative impacts of living in a cold home and most likely to benefit from home energy efficiency interventions. During that period 2,146 households from across Wales with health conditions who would otherwise not have benefitted from support received home energy efficiency measures through the health route. Proposals to fully incorporate the health route into future schemes was included in the consultation on proposals for the next iteration of the Warm Homes Programme which closed on 1 April 2022.
- 4.11 These Regulations amend the 2011 Regulations to extend eligibility for a grant to applicants who live in a dwelling with an asset rating of 68 or less (EPC D or less) and who are either in receipt of means tested benefits or from a lower income household and satisfy this health eligibility criteria. In general, the Welsh Government's policy aims to increase the energy efficiency of the worst performing dwellings; consequently, the criterion for dwellings where no occupant has one of the health conditions is retained at an asset rating of 54 or less (EPC E or worse) as per the 2011 Regulations.
- 4.12 The consultation on proposals for a future Warm Homes Programme acknowledged that some dwellings which previously benefitted from successful grant applications may require further energy efficiency improvements. These Regulations will remove the restriction in the 2011 Regulations on repeat applications for the same dwelling. The asset rating criteria ensures grants remain focused on the worst performing dwellings.

5. Consultation

- 5.1 A 12 week consultation ran from 22 December 2021 to 1 April 2022 on the policy objectives of home energy efficiency grant schemes. 67 responses were received. Additionally, three virtual stakeholder workshops were held on 1 February 2022, 1 March 2022 and 3 March 2022. 103 delegates attended the workshops from a wide range of backgrounds and organisations.
- 5.2 The consultation considered eligibility as well as wider issues. The following summarises only the matters relevant to these Regulations. The consultation document and a summary of the responses are available at: [Proposals for the next iteration of the Warm Homes Programme | GOV.WALES](https://gov.wales/proposals-for-the-next-iteration-of-the-warm-homes-programme)
- 5.3 On eligibility, there was strong support for future schemes to be focused on helping people in fuel poverty whilst contributing to decarbonisation goals.
- 5.4 When asked an open question on any gaps in provision which should be filled in future schemes, 34% of respondents to the consultation stated there should be wider eligibility. This principle of supporting all households in need was also a feature of the workshops. There were calls for flexible eligibility criteria, however given the need to focus on those most in need, the decision was taken to define the target cohort.
- 5.5 On the matter of income or savings thresholds, there was a wide range of suggestions for specific values, a recommendation for an affordability calculator, a respondent who suggested a minimum level of retained savings and a recognition that there would be a need for any value to keep track with inflation. The response recognised the potential complexity in setting eligibility criteria but set the principle that any grants should reach those most in need and prioritise the interventions which will support them.
- 5.6 Whilst respondents generally wanted to provide an opportunity to extend support to include other households from the owner occupier and private rented sector, this was based on the expectation it would tackle the issues of fuel poverty and affordability. The government response committed to considering a lower income threshold rather than focusing on means-tested benefits. It also set out our approach to EPC ratings and for a different route for those with specified health conditions.
- 5.7 There was strong support for allowing multiple applications per household or dwelling over time. The rationale given was that circumstances change and it may make sense to adopt a phased approach from a disruption and inconvenience perspective. However, there was also caution that grants should be given on the basis that we should seek to 'do it right and do it once' to drive cost-effectiveness. The government response recognised and agreed with the need for multiple applications per household, but that there should be controls around it. The principle of following a Whole

House Assessment approach will set out a cost-effective suite of measures, including consideration of a phased approach as appropriate.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1 This Regulatory Impact Assessment (RIA) presents two options:

- **Option 1 – keep the status quo.** Retain the 2011 Regulations without further amendment.
- **Option 2 – make the Regulations.** Legislate to amend eligibility criteria related to health conditions, job seekers allowance and households on low income but not in receipt of means tested benefits. Permit multiple applications for the same home.

Costs and benefits

Option 1 – keep the status quo

6.2 Option 1 would not require any legislative change and there would be no administrative costs associated with implementing the changes.

6.3 An estimated 280,000 households in Wales are on means-tested benefits and are already eligible for the grant under this option, subject to also meeting the criteria relating to the asset rating of their home. This data represents a late 2022 reference period.

6.4 It is not possible to accurately include all of those claiming income-based Employment Support Allowance, or to exclude those on contributory-based Job Seekers Allowance. It was also not possible to remove overlaps between families claiming tax credits and people claiming any of the Department for Work and Pensions benefits, so there may be some double counting. However, we expect the impact of the above to be minimal in the scale of the overall figures.

6.5 An estimated 10,000 households in Wales were in receipt of job-seekers allowance in 2021-22, a proportion of which will be living in energy inefficient homes. It is likely the numbers of people claiming income-based Job-Seekers Allowance disadvantaged by the status quo is relatively small and will diminish over time as the claimants are moved onto Universal Credit. However, for any one of those individuals the impact is high. In mitigation ahead of publishing these Regulations, Welsh Government has temporarily allowed these individuals to claim eligibility using provisions in regulation 5(4) of the 2011 Regulations. This arrangement has been in place for the duration of the Nest scheme, since 2013.

6.6 A decision based on this option not to proceed with adopting the health route for specific health conditions would have a negative impact on up to 28% of the population. Note, this figure represents the estimated number of people with a chronic respiratory, circulatory or mental health condition.

It is not possible to cross reference with housing conditions and, consequently is likely to be an over-estimate.

- 6.7 Maintaining a restriction on multiple applications would withhold support from a proportion of the 77,000 households supported through the Warm Homes Programme to date whose homes may remain below EPC E and, consequently, who may benefit from further measures.

Option 2 – make the Regulations

- 6.8 There are limited additional costs relating to this option. The legal and policy input required to develop the Regulations will use existing resources. Any advisor training, updates to publicity materials and communications with the public and partner organisations is covered by existing budgets and is estimated at less than £50k.
- 6.9 The Capital budget for a future scheme will be allocated annually and is not dependent on the criteria set in these Regulations. However, increasing eligibility results in an increased risk that the Capital budget may not meet demand. The recent cost of living crisis has significantly increased interest in support, with calls to our advice service increasing from 15,000 a year to over 22,000 a year. On 1 April, we are launching an enhanced advice service to provide households with information on the full range of options available to them, with the intention to leverage additional funding from Great Britain wide schemes alongside our Welsh Government funding.

On including income-based Job Seekers Allowance

- 6.10 The numbers of people claiming income-based Job-Seekers Allowance disadvantaged by the status quo is relatively small and will diminish over time as they are moved onto Universal Credit. However, for any one of those individuals the impact is high as they are excluded from the scheme and cannot access free energy efficiency measures. In mitigation ahead of publishing these Regulations, Welsh Government has temporarily allowed these individuals to claim eligibility using provision in paragraph 5(4) of the 2011 Regulations.

On extending the eligibility to lower income households not in receipt of means-tested benefits

- 6.11 It is estimated that at least 150,000 households in Wales are not on means-tested benefits but are below the relative income poverty threshold for lower income households (60% of the median equivalised net household income using the Households Below Average Income methodology).
- 6.12 There is no data regarding the number of these households living in energy inefficient homes. However, there is a known correlation between

income and housing quality. Therefore, by extending the eligibility this option opens the scheme to up to 150,000 more households.

On eligibility for specific health conditions and homes of EPC D

6.13 The National Survey for Wales results provides details of self-reported data on individuals with health conditions. An estimated 28% of the population are living with a chronic respiratory, circulatory or mental health condition. It is not possible to confirm how many of these individuals were living in energy inefficient homes, however, there is a recognised link between low quality housing and these illnesses.

On removing restrictions on multiple applications

6.14 Over the course of the Warm Homes Programme since 2010, over 77,000 lower income households have benefitted from support. Many homes have improved in their energy efficiency up to the maximum allowed under the scheme. However, a proportion remain at an EPC E or below and may benefit from further improvement in future years. In practice, this will be dependent on the outcome of an assessment of the home to determine whether additional measures are appropriate.

Preferred Option

6.15 Option 2 is preferred. While it introduces a risk of over-subscription to a future scheme, this is outweighed by the benefits of expanding eligibility to a greater number of people who need support. In practice, large amounts of interest in support will be managed by leveraging Great Britain wide schemes alongside the future Welsh Government Warm Homes scheme. Schemes of this nature are also designed to be scalable to future budget allocations.

Integrated Impact Assessment

6.16 An Integrated Impact Assessment (IIA) has been carried out on the new Warm Homes demand-led scheme, including the impacts of these Regulations.

A summary of the IIA can be found here: <https://www.gov.wales/new-warm-homes-programme-integrated-impact-assessment> and the Children's Rights Impact Assessment is here: <https://www.gov.wales/new-warm-homes-programme-childrens-rights-impact-assessment>

7. Post implementation review

7.1 The Welsh Government will review the effect of these Regulations within the context of wider evaluation of energy efficiency grants.